

## 3.10 INDIAN TRUST ASSETS

Implementation of the proposed action and alternatives has the potential to create both direct and indirect impacts to ITAs. ITAs are "...'legal interests' in 'assets' held in 'trust' by the Federal government for Federally recognized Indian tribes or individual Indians" (USBR 1994). All Federal bureaus and agencies are responsible for protecting ITAs from adverse impacts resulting from their programs and activities. Each Federal bureau or agency, in cooperation with potentially affected tribe(s), must inventory and evaluate assets, and then mitigate or compensate for adverse impacts to the asset. While most ITAs are located on reservation lands, they can also be located off-reservation. Examples of ITAs include, but are not limited to, land; minerals; rights to hunt, fish, and gather; and water rights (USBR 2000d). The following section describes ITAs that might potentially be impacted by actions taken by Federal agencies as a result of implementing the proposed action and alternatives.

### 3.10.1 Affected Environment

#### 3.10.1.1 Lower Colorado River

##### *Land*

The Phoenix Area Office of the BIA was contacted in June 2000 to determine the types of ITAs that might be affected by actions associated with implementation of the Conservation Plan. Six Indian reservations are located within or immediately adjacent to the planning area. The six reservations are the Hualapai Indian Reservation, the Fort Mojave Indian Reservation, the Colorado River Indian Reservation, the Chemehuevi Indian Reservation, the Fort Yuma Indian Reservation, and the Cocopah Indian Reservation.

Reservation lands are not the only lands held in trust for tribes and individual Indians. Small areas of land known as "allotments" were granted to individual Indians in the period after 1887 following passage of the Dawes Act. Allotments were granted to individual Indians living both on and off Indian reservations and ranged in size from a few to several hundreds of acres. The size of the allotment varied from reservation to reservation according to the date the allotments were patented. On many reservations in the United States, after the Indian population had been allotted land, the land that was not allotted was sold to non-Indians. This was not the case on reservations located in the Southwest. In some parts of the United States, Indians were accorded the right to sell their allotments after a prescribed period of time, usually 20+ years, but again, this generally did not occur for members of tribes in the Southwest (Weiss and Maas 1992).

Allotments were granted to individual tribal members on the Colorado River Indian Reservation and the Fort Yuma Indian Reservation. On the Colorado River Indian Reservation, allotments were granted to individual tribal members between 1904 and 1940. The first allotments on this reservation were limited to 5-acre parcels. Later allotments were 10 acres in size and even later, tribal members could receive up to 80 acres (Tiller 1996). Allotted lands on the Colorado River Indian Reservation are located near Parker, Arizona, and in areas to the southwest.

1 On the Fort Yuma Indian Reservation, 10-acre allotments were granted to individual tribal  
2 members in 1912, and the trust patents were approved in 1914 (Bee 1981). There are numerous  
3 (over 100) allotments in the southeastern portion of the Fort Yuma Indian Reservation,  
4 beginning at a point just north of the Colorado River and extending northward for some  
5 distance. Allotments in this area vary from 3-4 contiguous parcels, up to a maximum of 7  
6 contiguous parcels.

7 Ownership of allotments on the Colorado River Indian Reservation and the Fort Yuma Indian  
8 Reservation has passed to the heirs of the original allottees, with as many as 20-30 individuals  
9 having heirship rights to each allotment. If an activity associated with the Conservation Plan  
10 were to be planned for an area on either of these reservations where an allotment was present,  
11 the Federal agency, in cooperation with the tribe, would need to identify, notify, and obtain  
12 permission to use the land from each of the allotment heirs, and provide appropriate  
13 compensation for that use to the heirs and the tribe.

14 Tribes have the right to assign land on their reservations for farming, grazing, home sites, tribal  
15 economic developments, business ventures, cemeteries, and other purposes. Lands can be  
16 assigned or leased to tribal members and non-tribal members. Records of these assignments  
17 and/or leases are maintained by the issuing tribe.

#### 18 *Water Rights*

19 Tribal rights to Colorado River water are, at least partially, based on the 1908 *Winters v. United*  
20 *States* decision and have been further specified in the 1964 United States Supreme Court Decree  
21 in *Arizona v. California* and supplemental Decrees issued by the Court in 1979 and 1984. Five of  
22 the six tribes with reservation lands located within or bordering the planning area possess  
23 present perfected Federal reserved rights to Colorado River water. These tribes are the Fort  
24 Mojave Indian Tribe, the Chemehuevi Tribe, the CRIT, the Fort Yuma Quechan Tribe, and the  
25 Cocopah Indian Tribe. Taken together, these five tribes have present perfected Federal reserved  
26 rights to 920,718 AFY of Colorado River water.

27 The Fort Mojave Indian Reservation is located on the Colorado River near the point where the  
28 boundaries of Arizona, California, and Nevada meet. The tribe has reservation land in, and  
29 possesses present perfected Federal reserved water rights to Colorado River water in all three  
30 states, as specified in the Decree in *Arizona v. California* and the supplemental Decrees of 1979  
31 and 1984. The tribe has rights to 129,767 AFY of Colorado River water, including 103,535 AFY  
32 in Arizona, 13,698 AFY in California, and 12,534 AFY in Nevada (USBR 2000d).

33 The Chemehuevi Indian Reservation is located in southern California on plateau lands near the  
34 western shoreline of Lake Havasu. Pursuant to the Decree in *Arizona v. California* and the  
35 supplemental Decrees of 1979 and 1984, the tribe possesses present perfected Federal reserved  
36 water rights to 11,340 AFY of Colorado River water (USBR 2000d).

37 The CRIT Reservation is located in southwestern Arizona and southeastern California, south of  
38 Parker, Arizona. In accordance with the Decree in *Arizona v. California* and the supplemental  
39 Decrees of 1979 and 1984, the CRIT possess present perfected Federal reserved water rights to  
40 717,148 AFY of Colorado River water, including 662,402 AFY in Arizona and 54,746 AFY in  
41 California (USBR 2000d).

The Fort Yuma Indian Reservation is located in southwestern Arizona and southeastern California north and west of Yuma, Arizona. Water for the tribe is diverted from the Colorado River at Imperial Dam and is delivered through the Yuma Project Reservation Division-Indian Unit. The tribe also has small uses at homestead sites south of Yuma. Pursuant to the Decree in *Arizona v. California* and the supplemental Decrees of 1979 and 1984, the Fort Yuma Quechan Tribe possesses present perfected Federal reserved water rights to 51,616 AFY of Colorado River water (USBR 2000d).

The Cocopah Indian Reservation is located in southwestern Arizona, south of Yuma. The Cocopah Indian Tribe possesses present perfected Federal reserved water rights to 10,847 AFY of Colorado River water. The AFY figure cited here includes only that water diverted directly from the Colorado River at Imperial Dam. In addition to these rights, the tribe has numerous well permits that allow the tribe to pump groundwater from aquifers that may be connected to the Colorado River within the boundaries of the United States (USBR 2000d).

#### *Hydroelectric Power Generation and Distribution*

Headgate Rock Dam and Powerplant is owned and operated by the BIA. BIA supplies energy generated at the Headgate Rock Powerplant to the CRIT and other Indian tribes. WAPA markets any excess power produced at Headgate Rock on the open market (USBR 2002).

#### *Cultural Resources*

Tribes with traditional ties to lands included within the planning area include the Southern Paiute, Hualapai, Mohave, Chemehuevi, CRIT, Yavapai, Quechan, Cocopah, Hopi, Zuni, and Navajo tribes. As described in section 3.5, hundreds of cultural resources have been identified and documented on lands in the planning area. Many of these cultural resources sites were subsequently destroyed by dam construction and the filling of Lakes Mead, Mohave, and Havasu, and other agricultural, urban, and recreational developments. Federal agencies must treat cultural resources located on reservations as ITAs if the affected tribe requests that the resources be considered ITAs.

#### *Biological Resources*

The planning area contains habitat for sensitive fish and wildlife species, especially in riparian woodlands, backwaters, and marshes located along the Colorado River and its tributaries. A substantial portion of this habitat is located on reservation lands along the Colorado River (USBR 2002). Some members of the Hualapai, Mohave, Chemehuevi, CRIT, Quechan, and Cocopah tribes still collect a variety of native plants, which are utilized for food, medicinal, and ceremonial purposes, and in traditional craft production (e.g., basketry). Although no traditional gathering locales have been identified to date by any of the tribes, it is likely such areas exist both on and off reservation lands in the planning area.

##### **3.10.1.2 Muddy River/Moapa Valley and Virgin River**

No tribal lands are located in this off-site conservation area, and no ITAs are present.

3.10.1.3 *Bill Williams River*

No tribal lands are located in this off-site conservation area, and no ITAs are present.

3.10.1.4 *Lower Gila River*

No tribal lands are located in this off-site conservation area, and no ITAs are present.

3.10.2 **Environmental Consequences**

*Significance Criteria*

The analysis of impacts to ITAs is required by NEPA, which does not require the use of significance criteria. This analysis addresses whether the proposed action and alternatives would have the potential to create impacts to all classes of ITAs.

3.10.2.1 *Alternative 1: Proposed Conservation Plan*

*Impacts*

**Impact ITA-1: Implementing conservation measures on tribal land could result in changes to all classes of ITAs.** A number of tribes are LCR MSCP participants. Nonetheless, locating a conservation area establishment project on tribal land could result in the long-term dedication of that land for this purpose and limit other tribal uses during the span of the permit. Water would be needed for a variety of activities identified in the Conservation Plan. If tribal water rights were developed in support of planned conservation activities, this could result in the long-term dedication/lease of those rights for maintenance of those conservation projects, rather than for some other purpose that might be of economic and social benefit to the tribe. The United States, as trustee for tribal water rights, is committed to protecting these rights. Any action taken to implement the LCR MSCP Conservation Plan would not and cannot modify these decreed water rights in any manner.

Some conservation projects would require electricity to power pumps. If these projects were to be located in an area where it was possible to draw power from the Headgate Rock Powerplant, it is possible less power from this facility would be available to tribes for other purposes. As noted in section 3.5, implementation of the Conservation Plan could result in adverse effects to historic properties (ITAs) if they are present in the area of a proposed conservation project. Potential impacts to cultural resources would be addressed in accordance with historic preservation laws and regulations in effect at the time a project was being planned. Some activities associated with implementing the Conservation Plan would result in the re-establishment of native vegetation, which would be considered a beneficial effect. These same activities could, however, impact locations where other native plants are growing that are used for food, ceremonial, and medicinal purposes, and for the production of traditional craft items so careful avoidance planning would be required.

No activity associated with implementation of the Conservation Plan would be initiated on tribal land without the full cooperation and express permission of the tribe on whose land that activity might occur. LCR MSCP participants and the affected tribe would work cooperatively

to identify and resolve potential impacts to ITAs. Appropriate mitigation and/or compensation measures would be identified, negotiated, and memorialized in agreement form, thus resulting in no effect or no adverse effect to the identified ITA(s). If LCR MSCP participants and the tribe were unable to reach agreement on how best to resolve effects, the LCR MSCP activity would not be implemented on the reservation and there would be no effect to ITAs.

#### *Mitigation Measures*

No mitigation measures are required because substantial adverse impacts would not occur.

#### *Residual Impacts*

The Conservation Plan represents a comprehensive, coordinated program that would be implemented over the course of 50 years. Implementation of this alternative would afford LCR MSCP participants and tribes the opportunity to develop agreements for conservation area establishment on reservation lands that would be programmatic in character, which could decrease the likelihood for impacts to occur to ITAs. With programmatic, or project-specific, agreements in place, there would be no effect or no adverse effect to ITAs. If it were not possible to reach agreement on appropriate mitigation, the proposed conservation measures would not be implemented on reservation land, and there would be no effect to ITAs.

### **3.10.2.2 Alternative 2: No Action Alternative**

#### *Impacts*

Under the no action alternative, it is likely that conservation measures similar to those included in the proposed action would be implemented since compliance with the ESA still would be required for the covered activities on a case-by-case basis, although some conservation could occur in the off-site conservation areas (as described in section 3.10.2.4 below), as well as along the LCR. **Impact ITA-1** generally applies to Alternative 2, although some differences would occur. No tribal lands or ITAs are present in any of the off-site conservation areas; thus, no impacts to ITAs would occur if conservation were implemented in the off-site conservation areas. Additionally, some of the elements of the proposed action are unlikely to be implemented, including the establishment of a fund to support projects for maintaining and/or enhancing existing land cover types that provide habitat for covered species in the planning area. Under the proposed action, this money would be available to fund tribal projects that maintain/enhance these habitats on reservation lands, and the absence of the fund would remove this potential benefit to ITAs. To the extent that the agencies undertaking the covered activities proceed with ESA compliance through section 7 consultations instead of the section 10 permitting process, there may be a reduced number of covered species because unlisted species would not be included. This would also likely result in a smaller amount of conservation area being established, which generally would result in proportionately fewer impacts to ITAs.

#### *Mitigation Measures*

No mitigation measures are required because substantial adverse impacts would not occur.

#### *Residual Impacts*

Residual impacts are those that would occur after the implementation of mitigation measures to reduce an impact. No mitigation measures are required; thus, no residual impacts would occur.

#### **3.10.2.3 Alternative 3: Listed Species Only**

##### *Impacts*

**Impact ITA-1** applies to Alternative 3. Alternative 3 would develop fewer acres of conservation area (41 percent less) than the proposed action, which generally would result in proportionately fewer opportunities for conservation measures to be implemented on tribal land, and lessened impacts to ITAs.

No activity associated with Alternative 3 would be initiated on tribal land without the full cooperation and expressed permission of the tribe on whose land that activity might occur. The LCR MSCP participants and the affected tribes would work cooperatively to identify and resolve potential impacts to ITAs. Appropriate mitigation and/or compensation measures would be identified, negotiated, and memorialized in agreement form, thus resulting in no effect or no adverse effect to the identified ITAs. If the LCR MSCP participants and the tribe were unable to reach agreement on how best to resolve effects, the conservation measures would not be implemented on the reservation and there would be no effect to ITAs.

##### *Mitigation Measures*

No mitigation measures are required because substantial adverse impacts would not occur.

##### *Residual Impacts*

The Conservation Plan that would be implemented under Alternative 3 represents a comprehensive, coordinated program that would be implemented over the course of 50 years. Implementation of this alternative would afford LCR MSCP participants and tribes the opportunity to develop agreements for conservation area development on reservation lands that would be programmatic in character, which could decrease the likelihood for impacts to occur to ITAs. With programmatic, or project-specific, agreements in place, there would be no effect or no adverse effect to ITAs. If it were not possible to reach agreement on appropriate mitigation, the conservation measures would not be implemented on reservation land, and there would be no effect to ITAs.

#### **3.10.2.4 Alternative 4: Off-Site Conservation**

##### *Impacts*

No tribal lands or ITAs are present in any of the off-site conservation areas; thus, no impacts would occur if this alternative were implemented, beyond those potentially occurring in the planning area if backwaters were constructed on tribal lands. The potential for impacts to ITAs would be greatly lessened under this alternative in comparison to Alternatives 1 and 3, since a maximum of 360 acres of land could be affected.

1    *Mitigation Measures*

2    No mitigation measures are required because substantial adverse impacts would not occur.

3    *Residual Impacts*

4    The Conservation Plan represents a comprehensive coordinated program that would be  
5    implemented over the course of 50 years. Implementation of this alternative would afford LCR  
6    MSCP participants and tribes the opportunity to develop agreements for conservation area  
7    development on reservation lands that would be programmatic in character, which could  
8    decrease the likelihood for impacts to occur to ITAs. With programmatic, or project-specific,  
9    agreements in place, there would be no effect or no adverse effect to ITAs. If it were not  
10   possible to reach agreement on appropriate mitigation, the LCR MSCP activity would not be  
11   implemented on reservation land and there would be no effect to ITAs.

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